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Report of the independent international fact-finding mission on Myanmar*

Summary

The Human Rights Council established the independent international fact-finding mission on Myanmar in its resolution 34/22. In accordance with its mandate, the mission focused on the situation in Kachin, Rakhine and Shan States since 2011. It also examined the infringement of fundamental freedoms, including the rights to freedom of expression, assembly and peaceful association, and the question of hate speech.

The mission established consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States, in addition to serious violations of international humanitarian law. These are principally committed by the Myanmar security forces, particularly the military. Their operations are based on policies, tactics and conduct that consistently fail to respect international law, including by deliberately targeting civilians. Many violations amount to the gravest crimes under international law. In the light of the pervasive culture of impunity at the domestic level, the mission finds that the impetus for accountability must come from the international community. It makes concrete recommendations to that end, including that named senior generals of the Myanmar military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Contents

		Page
I.	Introduction	3
II.	Mandate and methodology	3
	A. Mandate	3
	B. Methodology	3
	C. Legal framework	4
III.	Context	4
IV.	Emblematic situations	5
	A. Rakhine State	5
	B. Kachin and Shan States	11
	C. Fundamental freedoms	14
V.	Hallmarks of Tatmadaw operations	14
	A. Targeting of civilians	15
	B. Sexual violence	15
	C. Exclusionary rhetoric	15
	D. Impunity	15
VI.	Crimes under international law	16
	A. Genocide	16
	B. Crimes against humanity	16
	C. War crimes	17
VII.	Responsibility	17
VIII.	Accountability	18
IX.	Conclusions and recommendations	19

I. Introduction

1. In its resolution 34/22, the Human Rights Council established the independent international fact-finding mission on Myanmar. The President of the Council appointed Marzuki Darusman (Indonesia) as chair, and Radhika Coomaraswamy (Sri Lanka) and Christopher Sidoti (Australia) as members. A secretariat was recruited by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

2. The mission presented an oral update to the Human Rights Council at its thirty-sixth session, and an oral interim report at its thirty-seventh session; it also delivered a video statement to the Council at its twenty-seventh special session, on 5 December 2017. The mission submits the present report to the Council pursuant to its decision 36/115.[1]

3. The mission regrets the lack of cooperation from the Government of Myanmar, despite the appeals made by the Human Rights Council and the mission. The mission addressed a letter to the Government on 4 September and 17 November 2017 and 29 January 2018 to request in-country access. It forwarded a detailed list of questions on 27 March 2018. Although the mission had limited informal contact with government representatives, it received no official response to its letters. The mission shared the present report with the Government prior to its public release. No response was received.

II. Mandate and methodology

A. Mandate

4. In its resolution 34/22, the Human Rights Council mandated the mission to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, with a view to ensuring full accountability for perpetrators and justice for victims.

5. The mission focused on the situation in Kachin, Rakhine and Shan States since 2011, namely, since the resumption of hostilities in Kachin State and escalation in Shan State in 2011, and the outbreak of major violence in Rakhine State in 2012. These events were turning points, generating renewed allegations of serious human rights violations and abuses. The mission selected several significant incidents for in-depth fact-finding, allowing detailed findings on specific allegations of violations and abuses, while revealing broader patterns of conduct. Serious allegations have also arisen in other contexts, meriting further investigation.

B. Methodology

6. Factual findings are based on the "reasonable grounds" standard of proof. This standard was met when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that an incident or pattern of conduct occurred.

7. The mission amassed a vast amount of primary information. It conducted 875 in-depth interviews with victims and eyewitnesses, both targeted and randomly selected. It obtained satellite imagery and authenticated a range of documents, photographs and videos. It checked this information against secondary information assessed as credible and reliable, including the raw data or notes of organizations, expert interviews, submissions and open-source material. Specialized advice was sought on sexual and gender-based violence, child psychology, military affairs and forensics. The mission relied only on verified and corroborated information.

[1] The findings and recommendations of the mission are detailed in document A/HRC/39/CRP.2.

8. To collect information, the members of the mission travelled to Bangladesh, Indonesia, Malaysia, Thailand and the United Kingdom of Great Britain and Northern Ireland. The secretariat undertook numerous additional field missions between September 2017 and July 2018. The mission also held over 250 consultations with other stakeholders, including intergovernmental and non-governmental organizations, researchers and diplomats, either in person and remotely. It received written submissions, including some in response to a public call.

9. The mission strictly adhered to the principles of independence, impartiality and objectivity. It sought consent from sources on the use of information, ensuring confidentiality as appropriate. Specific attention was paid to the protection of victims and witnesses, considering their well-founded fear of reprisals. The mission expresses its grave concern at the intimidation and threats faced by persons cooperating with the mechanisms of the Human Rights Council examining the situation in Myanmar. It urges Myanmar to protect human rights defenders.

C. Legal framework

10. The mission assessed facts in the light of international human rights law, international humanitarian law and international criminal law, as applicable in Myanmar. In addition to non-international armed conflicts in Kachin and Shan States, the mission considered that the violence in Rakhine State between the Arakan Rohingya Salvation Army (ARSA) and the Myanmar security forces constituted a non-international armed conflict, at least since 25 August 2017.[2]

III. Context

11. A succession of military regimes have ruled Myanmar since 1962. In 2008, a new Constitution was adopted, designed by the military to retain its dominant role in politics and governance. It instituted a system of government with military and civilian components. The Tatmadaw (armed forces) appoints 25 per cent of seats in both legislative bodies, and selects candidates for three key ministerial posts (Defence, Border Affairs and Home Affairs), and at least one of two Vice-Presidents. This is sufficient to control the National Defence and Security Council and the entire security apparatus, and to block constitutional amendments. The Tatmadaw has the right to administer and adjudicate its affairs independently, without civilian oversight. Current or former military officers occupy positions of authority across all branches of government, within the civil service and the judiciary, and in many State-owned enterprises. In 2010, the Government led by Thein Sein embarked on wide-ranging reforms towards political and economic liberalization, without amending the Constitution. The National League for Democracy won the election held in November 2015, and a Government led by that party took office on 31 March 2016. Sanctions were lifted and foreign investment welcomed.

12. In addition to the Bamar, Myanmar includes other ethnic groups that constitute 32 per cent of the estimated population.[3] Since independence, the numerous ethnically-based armed conflicts have been used by the Tatmadaw to justify its power, presenting itself as the guarantor of national unity. Several groups hold deep-rooted grievances, struggling for greater autonomy and an equitable sharing of natural resources. While Governments have made overtures towards negotiated peace agreements, hostilities have continued. These conflicts indicate that the nation-building efforts of the military have failed: there is no unifying "Myanmar" national identity, and resentment against Bamar-Buddhist domination has only grown. Notably, under military rule, the concept of "national races" has gradually

[2] Assessment in line with that of the International Committee of the Red Cross (ICRC). See for example, ICRC, "Rakhine: Returns must be safe, dignified and voluntary", speech by the ICRC President at the Shangri-La Dialogue, Singapore, 2 June 2018.

[3] See 2014 Population and Housing Census of Myanmar (available from http://myanmar.unfpa.org/en/publications/2014-population-and-housing-census-myanmar-data-sheet).

become the key criterion for membership in the country's political community, creating a common "other". The military regime has constructed eight major ethnic groups, broken down further into 135 "national races". The list defines those who "belong" in Myanmar; all others, regardless of how many generations they have lived in Myanmar, are considered outsiders or immigrants. This includes the Rohingya.[4] According to the Tatmadaw, "Despite living among peacocks, crows cannot become peacocks."[5]

13. According to the 2014 census, 87.9 per cent of the population of Myanmar is Buddhist, 6.2 per cent Christian, and 4.3 per cent Muslim. While the Bamar are predominantly Buddhist, many other ethnic groups contain large numbers of non-Buddhists. Attempts in the 1960s to designate Buddhism as the State religion were divisive. The Constitution adopted in 2008 recognizes the "special position" of Buddhism, while acknowledging other religions. Since reforms began in 2011, Myanmar has seen an increase in Buddhist nationalism, virulent anti-Muslim rhetoric and violence between Buddhists and Muslims. Among the largest Buddhist nationalist organizations is the Association for the Protection of Race and Religion (known also as "MaBaTha"), which cast itself as the protector of Buddhism. While MaBaTha was nominally disbanded, its successors are still widely supported.

14. Today, the Tatmadaw enjoys greater popularity among the Bamar-Buddhist majority. The violence, particularly the "Rohingya crisis", has been used by the military to reaffirm itself as the protector of a nation under threat and to cement its political role further. This is remarkable considering its appalling human rights record and the long struggle of the democracy movement against its rule. Myanmar has been a country of concern for the United Nations for 30 years, with resolutions condemning its human rights situation since 1991. For three decades, successive special rapporteurs on the situation of human rights in Myanmar concluded that patterns of human rights violations were widespread and systematic, linked to State and military policy. Allegations of gross human rights violations have continued since 2011 and were the focus of the mission.

IV. Emblematic situations

15. The mission focused on three emblematic situations: the crisis in Rakhine State; the hostilities in Kachin and Shan States; and the infringement on the exercise of fundamental freedoms and the issue of hate speech.

A. Rakhine State

16. Rakhine State has a poverty rate nearly twice the national average. All communities in Rakhine suffer from poor social services and a scarcity of livelihood opportunities. The State's two largest groups are the Rakhine Buddhists and the Rohingya Muslims; the former constitutes the majority; the latter, the majority in the north. There are several other ethnic minorities, including the Kaman Muslims. The problems in Rakhine State are often ascribed to poor relations between the Rohingya and the Rakhine, reflective of deeply-rooted grievances and prejudices. Nonetheless, the majority of Rohingya and Rakhine interviewed by the mission indicated that relationships with the other community had been good prior to 2012, citing examples of business dealings and friendships.

[4] The mission is conscious of the sensitivity concerning the term "Rohingya" in Myanmar, where the group is generally referred to as "Bengali". The term is used in the present report in accordance with the right to self-identify.

[5] "Myanmar Politics and the Tatmadaw", Tatmadaw, Directorate of the Public Relations and Psychological Warfare, 2018, p. 115.

1. Violations against ethnic Rakhine

I want to share my story with the whole world because the world does not know what is happening in our place.[6]

17. The members of the mission spoke with many ethnic Rakhine, who highlighted serious human rights violations perpetrated by the Myanmar security forces against them. These violations are similar to those experienced by other ethnic groups in Myanmar.

18. The Tatmadaw used Rakhine men, women and children for forced or compulsory labour, mostly for "portering". Other violations included forced evictions through land confiscation, arbitrary arrest and detention, and violations of the rights to life, to physical and mental integrity, and to property. Tatmadaw soldiers also subjected Rakhine women to sexual violence, often in the context of forced labour; for example, one victim explained how, in 2017, she was taken to a military base, beaten and raped by a Tatmadaw captain.

19. The mission also received reports of repressive action against the assertion of Rakhine identity. For example, in January 2018, the police used excessive force in dispersing a demonstration in Mrauk-U against the cancellation of an annual ethnic Rakhine event, killing seven protestors.

2. Systemic oppression and persecution of the Rohingya

In Rakhine State, Muslims are like in a cage, they cannot travel outside. There are no human rights for the Muslims of Rakhine. I don't know why God sent us there.

20. The process of "othering" the Rohingya and their discriminatory treatment began long before 2012. The extreme vulnerability of the Rohingya is a consequence of State policies and practices implemented over decades, steadily marginalizing them. The result is a continuing situation of severe, systemic and institutionalized oppression from birth to death.

21. The cornerstone of the above-mentioned oppression is lack of legal status. Successive laws and policies regulating citizenship and political rights have become increasingly exclusionary in their formulation, and arbitrary and discriminatory in their application. Most Rohingya have become de facto stateless, arbitrarily deprived of nationality. This cannot be resolved through the citizenship law of 1982, applied as proposed by the Government through a citizenship verification process. The core issue is the prominence of the concept of "national races" and the accompanying exclusionary rhetoric, originating under the dictatorship of Ne Win in the 1960s. The link between "national races" and citizenship has had devastating consequences for the Rohingya.

22. The displacement of Rohingya in the 1970s and 1990s, in the context of the military regime's implementation of this exclusionary vision, were earlier markers. Observers, including United Nations human rights mechanisms and civil society, have alerted the Myanmar authorities and the international community to a looming catastrophe for decades.

23. The travel of Rohingya between villages, townships and outside Rakhine State has long been restricted on the basis of a discriminatory travel authorization system. This has had serious consequences for economic, social and cultural rights, including the rights to food, health and education. The degree of malnutrition witnessed in northern Rakhine State has been alarming. Other discriminatory restrictions include procedures for marriage authorization, restrictions on the number and spacing of children, and the denial of equal access to birth registration for Rohingya children. For decades, security forces have subjected Rohingya to widespread theft and extortion. Arbitrary arrest, forced labour, ill-treatment and sexual violence have been prevalent.

[6] Quotes are from victim interviews, unless stated otherwise.

3. Violence in 2012

We cried when we left; 25 years of hard work lost. My time is almost finished, but what will happen to my children and grandchildren?

24. In this context, two waves of violence swept Rakhine State, in June and in October 2012, affecting 12 townships. The murder, and alleged rape, of a Rakhine woman and the killing of 10 Muslim pilgrims are commonly presented as key triggers. According to the government inquiry commission, the violence left 192 people dead, 265 injured and 8,614 houses destroyed. Actual numbers are likely much higher. Further violence broke out in Thandwe in 2013.

25. Although the Government's depiction of the violence as "intercommunal" between the Rohingya and the Rakhine has prevailed, it is inaccurate. While there certainly was violence between Rohingya and Rakhine groups, resulting in killing and the destruction of property, these attacks were not spontaneous outbursts of hostility; they resulted from a plan to instigate violence and amplify tensions. A campaign of hate and dehumanization of the Rohingya had been under way for months, and escalated after 8 June 2012, led by the Rakhine Nationalities Development Party (RNDP), various Rakhine organizations, radical Buddhist monk organizations, and several officials and influential figures. It was spread through anti-Rohingya or anti-Muslim publications, public statements, rallies and the boycott of Muslim shops. The Rohingya were labelled "illegal immigrants" and "terrorists", and portrayed as an existential threat that might "swallow other races" with their "incontrollable birth rates". In November 2012, the RNDP, in *Toe Thet Yay*, an official publication, cited Hitler, arguing that "inhuman acts" were sometimes necessary to "maintain a race".

26. Myanmar security forces were at least complicit, often failing to intervene to stop the violence, or actively participated. They injured, killed and tortured Rohingya and destroyed their properties. Witnesses from Sittwe and Kyaukpyu described cases of security forces preventing Rohingya or Kaman from extinguishing houses set on fire by Rakhine, including by gunfire. Witnesses from Maungdaw described security forces shooting indiscriminately at Rohingya and conducting mass arbitrary arrests, including of Rohingya workers from non-governmental organizations. Large groups were transferred to Buthidaung prison, where they faced inhuman conditions and torture. Prisoners were beaten by prison guards and fellow Rakhine detainees, some fatally.

27. The violence in 2012 marked a turning point in Rakhine State: the relationship between the Rakhine and Rohingya deteriorated; fear and mistrust grew. Although the Kaman are a recognized ethnic group, they were targeted alongside the Rohingya as Muslims, and have since suffered increasing discrimination and marginalization.

28. The Government responded to the violence by an increased presence of security forces and enforced segregation of communities. A state of emergency declared on 10 June 2012 was lifted only in March 2016. Township authorities in Rakhine State imposed a curfew and prohibited public gatherings of more than five people. These restrictions remain in force today in Maungdaw and Buthidaung and have been applied in a discriminatory manner against the Rohingya. They have an impact on freedom of religion, as people are prevented from praying collectively in mosques.

29. The violence displaced more than 140,000 people, mostly Rohingya. The few thousand displaced ethnic Rakhine were able to return or were resettled by the Government. Six years after the violence, 128,000 Rohingya and Kaman remain segregated, confined in camps and displacement sites, without freedom of movement, access to sufficient food, adequate health care, education or livelihoods. The displaced are prevented from returning to their place of origin. Such confinement exceeds any justifiable security measure and constitutes arbitrary deprivation of liberty. Other Rohingya in central Rakhine, including those resettled, also face severe restrictions, including on freedom of movement, which has an impact on daily life.

30. The violence exacerbated the oppression of the Rohingya. Movement outside Rakhine State became even more difficult. Rohingya students have not been able to enrol at Sittwe University since 2012; their access to higher education has been effectively removed.

This is a violation of the right to education, and a powerful tool to ensure cross-generational marginalization. Although Rohingya were allowed to vote in 2010, the right was revoked prior to the elections in 2015. The oppressive climate led to an increase in Rohingya leaving Rakhine State by boat in the following years.

4. 25 August 2017 and the "clearance operations"

That day felt like the last day of this world, as if the whole world was collapsing. I thought judgment day had arrived.

31. What happened on 25 August 2017 and the following days and weeks was the realization of a disaster long in the making. It was the result of the systemic oppression of the Rohingya, the violence of 2012, and the Government's actions and omissions since then. It caused the disintegration of a community.

32. In the early hours of 25 August, ARSA launched coordinated attacks on a military base and up to 30 security force outposts across northern Rakhine State, in an apparent response to increased pressure on Rohingya communities and with the goal of global attention. A small number of minimally-trained leaders had some arms, and a significant number of untrained villagers wielded sticks and knives. Some had improvised explosive devices. Twelve security personnel were killed.

33. The response of security forces, launched within hours, was immediate, brutal and grossly disproportionate. Ostensibly to eliminate the "terrorist threat" posed by ARSA, in the days and weeks that followed, it encompassed hundreds of villages across Maungdaw, Buthidaung and Rathedaung. The operations targeted and terrorized the entire Rohingya population. The authorities called them "clearance operations". As a result, by mid-August 2018, nearly 725,000 Rohingya had fled to Bangladesh.

34. Even though the operations were conducted over a broad geographic area, they were strikingly similar. Tatmadaw soldiers would attack a village in the early hours, frequently joined by other security forces, often by Rakhine men and sometimes men from other ethnic minorities. The operations were designed to instil immediate terror, with people woken by intense rapid weapon fire, explosions or the shouts and screams of villagers. Structures were set ablaze, and Tatmadaw soldiers fired their guns indiscriminately into houses and fields, and at villagers.

35. The nature, scale and organization of the operations suggest a level of preplanning and design by the Tatmadaw leadership that was consistent with the vision of the Commander-in-Chief, Senior General Min Aung Hlaing, who stated in a Facebook post on 2 September 2018, at the height of the operations, that "the Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem."

(a) Human rights catastrophe

Everyone was just running for their lives. I was not even able to carry my children.

36. The "clearance operations" constituted a human rights catastrophe. Thousands of Rohingya were killed or injured. Information collected by the mission suggests that the estimate of up to 10,000 deaths[7] is a conservative one. Mass killings were perpetrated in Min Gyi (Tula Toli), Maung Nu, Chut Pyin and Gudar Pyin, and in villages in the Koe Tan Kauk village tract. In some cases, hundreds of people died. In both Min Gyi and Maung Nu, villagers were gathered together before the men and boys were separated and killed. In Min Gyi, women and girls were taken to nearby houses, gang raped, then killed or severely injured. Houses were locked and set on fire. Few survived. In numerous other villages, the number of casualties was also markedly high. Bodies were transported in military vehicles, burned and disposed of in mass graves.

[7] Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar", March 2018.

37. People were killed or injured by gunshot, targeted or indiscriminate, often while fleeing. Villagers were killed by soldiers, and sometimes by Rakhine men, using large bladed weapons. Others were killed in arson attacks, burned to death in their own houses, in particular the elderly, persons with disabilities and young children, unable to escape. In some cases, people were forced into burning houses, or locked in buildings set on fire.

38. Rape and other forms of sexual violence were perpetrated on a massive scale. Large-scale gang rape was perpetrated by Tatmadaw soldiers in at least 10 village tracts of northern Rakhine State. Sometimes up to 40 women and girls were raped or gang-raped together. One survivor stated, "I was lucky, I was only raped by three men". Rapes were often in public spaces and in front of families and the community, maximizing humiliation and trauma. Mothers were gang raped in front of young children, who were severely injured and in some instances killed. Women and girls 13 to 25 years of age were targeted, including pregnant women. Rapes were accompanied by derogatory language and threats to life, such as, "We are going to kill you this way, by raping you." Women and girls were systematically abducted, detained and raped in military and police compounds, often amounting to sexual slavery. Victims were severely injured before and during rape, often marked by deep bites. They suffered serious injuries to reproductive organs, including from rape with knives and sticks. Many victims were killed or died from injuries. Survivors displayed signs of deep trauma and face immense stigma in their community. There are credible reports of men and boys also being subjected to rape, genital mutilation and sexualized torture.

39. Children were subjected to, and witnessed, serious human rights violations, including killing, maiming and sexual violence. Children were killed in front of their parents, and young girls were targeted for sexual violence. Of approximately 500,000 Rohingya children in Bangladesh, many fled alone after their parents were killed or after being separated from their families. The mission met many children with visible injuries consistent with their accounts of being shot, stabbed or burned.

40. Numerous men and boys were rounded up, marched into the forest by security forces or taken away in military vehicles. While some families hope that their fathers and brothers were imprisoned, others suspect they have been killed.

41. Hundreds of thousands of Rohingya fled, without shelter, food or water. They walked for days or weeks through forests and over mountains. People died on the way, some succumbing to injuries sustained during the attacks. Women gave birth; some babies and infants died. An unknown number of people drowned after their boat capsized, or when crossing rivers. The Tatmadaw also killed Rohingya during the journey and at border crossings. Landmines planted in border areas by the Tatmadaw in early September 2017, apparently to prevent or dissuade Rohingya from returning, led to further loss of life and severe injuries.

42. Satellite imagery and first-hand accounts corroborate widespread, systematic, deliberate and targeted destruction, mainly by fire, of Rohingya-populated areas across the three townships. At least 392 villages (40 per cent of all settlements in northern Rakhine) were partially or totally destroyed, encompassing at least 37,700 individual structures. Approximately 80 per cent were burned in the initial three weeks of the operations, a significant portion of which after the Government's official end date of the "clearance operations". More than 70 per cent of the villages destroyed were in Maungdaw, where the majority of Rohingya lived. Most destroyed structures were homes. Schools, marketplaces and mosques were also burned. Rohingya-populated areas were specifically targeted, with adjacent or nearby Rakhine settlements left unscathed.

(b) A foreseeable and planned catastrophe

> *My Rakhine neighbour warned me, "You cannot stay here and we cannot control the bad behaviour of our own people. The Government is planning to drive away your people."*

43. The attacks conducted by ARSA in 2017 and the ensuing "clearance operations" did not occur in a vacuum. They were foreseeable and planned.

44. ARSA emerged as a Rohingya resistance organization in response to the violence in 2012 and increased State oppression over all aspects of life. On 9 October 2016, the group[8] launched a small first offensive against three border guard police posts in northern Rakhine State. Nine police officers were killed, and ARSA obtained some arms. The security forces, led by the Tatmadaw, responded with the "clearance operations". Some 87,000 Rohingya fled to Bangladesh. The same tactics and violations were seen in this operation as later in 2017, albeit on a smaller scale. A government investigation commission led by the Vice-President, and the security forces' own inquiries, cleared the security forces of wrongdoing, endorsing the lawfulness and appropriateness of the response.

45. As in 2012, the violence in 2016 resulted in a further intensification of oppressive measures against the Rohingya. Security forces, camps and checkpoints were increased. Daily life for the Rohingya became unbearable, with extreme movement restrictions. Protective fences around Rohingya houses were removed, and knives and other sharp implements were confiscated. Security patrols, house searches and cases of beatings, theft and extortion increased. Hundreds of men and boys were arrested, with the most educated and influential frequently targeted. Many were subjected to ill-treatment or torture in detention. Some were later released on payment of bribes; others have not been seen since. Women and girls were subjected to sexual violence, including gang rape.

46. In parallel, the authorities embarked on a renewed effort to impose the National Verification Card on the Rohingya, a card that the latter had refused, seeing it as symbol of a discriminatory system that would entrench their status as "Bengali immigrants". The card increasingly became a prerequisite for passing through checkpoints, gaining access to farmland, and for fishing. Intimidation and force were used, including at community meetings in the presence of the police and military, during which threats were made at gunpoint. At these meetings, villagers were told to "take the card or leave the country"; others, for example in Chut Pyin, were told by soldiers to accept it or be killed. Most Rohingya still refused.

47. In May and July 2017, the ultranationalist monk Wirathu visited northern Rakhine, where he conducted mass public sermons. The village of Zay Di Pyin (Rathedaung Township) was blockaded by Rakhine villagers and security forces throughout August. Amid heightened tension immediately before 25 August 2017, Myanmar media increasingly reported on alleged ARSA activity in an inflammatory manner. State-sponsored hate speech towards the Rohingya also continued.

48. A large build-up of troops and other military assets across northern Rakhine began in early August 2017, following a meeting between Rakhine politicians and the Tatmadaw Commander-in-Chief. Soldiers from the 33rd and 99th Light Infantry Divisions were airlifted into Rakhine State, with additional deliveries of military equipment. The increased presence was evident. Soldiers took over border guard police posts. Rakhine men were recruited into the security forces, including "fast-track" recruitment into the police. Other local Rakhine men were mobilized and armed. This build-up was significant, requiring logistical planning and time to implement, considerations that indicate that the subsequent operations were foreseen and planned.

(c) An enduring catastrophe

> *I will not go back until they recognize our rights like others in Myanmar. Otherwise, I would prefer to die here.*

49. While the Government claimed that "clearance operations" had ended on 5 September,[9] military engagement continued well into October. Freedom of movement was further constrained, restricting remaining Rohingya to their houses, with limited access to markets and livelihoods and exacerbating malnutrition. Humanitarian access was severely restricted or blocked. Conversely, no protection was provided to Rohingya against vigilante

[8] Then known as Harakah al-Yaqin.

[9] See www.facebook.com/state.counsellor/posts/speech-delivered-by-her-excellency-daw-aung-san-suu-kyi-state-counsellor-of-the-/1121130291354519/ (accessed on 10 September 2018).

attacks and the theft of property, livestock and other possessions by members of other ethnic groups. Sporadic attacks, including sexual violence, continued. These factors forced more Rohingya to flee to Bangladesh, at an average rate of 1,733 per month since the beginning of 2018.

50. The mass displacement and the burning of Rohingya villages were followed by the systematic appropriation of the vacated land. Bulldozers flattened burned, damaged and even surviving structures and vegetation, erasing every trace of the Rohingya communities, while also destroying criminal evidence. Dozens of Rohingya villages have vanished. New structures include posts for security forces and housing for other ethnic groups. Government "resettlement" plans suggest that almost all houses to be constructed for displaced communities are designated for non-Rohingya. Other infrastructure projects appropriating Rohingya lands, including new roads and mines, are under way.

51. While the Government has, in principle, made a commitment to Rohingya repatriation, nothing indicates to date that this will be in a manner that ensures respect for human rights, which is essential for a safe, dignified and sustainable return of those displaced. The repatriation procedure requires acceptance of National Verification Cards and processing in barbed-wired reception centres. The root causes of the exodus, including State-sanctioned oppression and an exclusionary and divisive rhetoric, are denied, yet continue unabated. The security forces that perpetrated gross human rights violations with impunity would be responsible for ensuring the security of returnees.

(d) Perpetrators

52. The "clearance operations" were led by the Tatmadaw, with other security forces, mainly the Myanmar police force and the border guard police. Units of the Western Command were actively engaged, together with the 33rd and 99th Light Infantry Divisions, which report directly to the Deputy Commander-in-Chief, General Soe Win. The latter divisions were responsible for some of the most serious violations. Almost all instances of sexual violence are attributable to the Tatmadaw.

53. In some villages, Rakhine men participated in the operations, mostly looting and burning, but also killing and injuring Rohingya. Civilians from other minority ethnic groups were also involved in some places. The recurrent and organized involvement of civilian groups in the operations, and the consistent way in which they were equipped, tasked and executed their roles across the three townships, demonstrate orchestration by the Tatmadaw.

54. ARSA also committed serious human rights abuses, including the killing of dozens of suspected informants and the burning of the Rakhine village of Ah Htet Pyu Ywa on 25 August 2017. Although the Government has claimed that ARSA burned Rohingya villages, the mission found no such indication. Other abuses allegedly perpetrated by ARSA, including several incidents where Rakhine and members of other ethnic groups, including the Mro, were killed, require further investigation, as does the killing of up to 100 Hindu men and women from Kha Maung Seik. The mission's primary source information on the latter incident corroborates the killing, but is inconclusive as to the perpetrator. Other militant or criminal groups were also active in the region and may have been responsible also for abuses.

B. Kachin and Shan States

> *The Tatmadaw soldiers don't treat us like humans, they treat us like animals. They look at us as though we shouldn't even exist.*

55. Similar patterns of conduct by security forces, particularly the Tatmadaw, have been witnessed elsewhere. The mission focused on the situation in northern Myanmar (Kachin and Shan States), where interlocutors considered their plight ignored.

56. Successive Governments have signed bilateral ceasefire agreements and a nationwide ceasefire agreement with various "ethnic armed organizations". In parallel, since 2011, northern Myanmar has witnessed a sharp increase in fighting between the Tatmadaw and armed groups, in particular those excluded from or not signatories to the

ceasefire agreement; these include the Kachin Independence Army, after a 17-year ceasefire broke down in 2011; the Shan State Army-North; the Myanmar National Democratic Alliance Army; and the Ta'ang National Liberation Army. Clashes also erupted between the Ta'ang National Liberation Army and the Shan State Army-South.

57. Each of the above-mentioned conflicts has a complex history and is fuelled by various grievances, including with regard to land use, development projects, the exploitation of natural resources and illegal narcotics trading. The underlying factors, however, are demands for greater autonomy, self-determination and the elimination of ethnic or religious discrimination, as well as resentment about Tatmadaw tactics targeting civilians and violating human rights.

58. The mission verified a number of incidents in the context of these armed conflicts, and subsequently confirmed consistent patterns of violations of international law. With continuing hostilities and prevailing insecurity, these violations persist.

1. Violations by the Tatmadaw

There were no rebels in my village. But the army just came and attacked the people.

59. The Tatmadaw operations in northern Myanmar are characterized by systematic attacks directed at civilians and civilian objects, and indiscriminate attacks. Attacks are often carried out in civilian-populated residential areas, without any apparent military objective and in flagrant disregard for life, property and the well-being of civilians. Tatmadaw soldiers have shot directly at and shelled civilians fleeing or seeking shelter. Attacks routinely resulted in civilian deaths and injuries. Widespread looting and the destruction and burning of homes were commonplace. This conduct was observed in most conflict-affected areas in northern Myanmar, especially in or around territory under the control of ethnic armed organizations.

60. This modus operandi is a catalyst for other violations. Civilians are targeted because they belong to the same ethnic group or because they are considered to be of "fighting age", seemingly in an effort to dissuade civilians from becoming involved with ethnic armed organizations. The mission established a pattern of violations of the right to life, with numerous unlawful killings, mostly committed in the context of military operations, as a consequence of indiscriminate attacks, attacks targeting civilians, or the murder or extrajudicial execution of persons in Tatmadaw custody. Unlawful killings are committed in other contexts also, without any immediate or apparent link to hostilities, for example in the context of forced labour.

61. Similar patterns emerge for cases of torture and other forms of ill-treatment, often against men, women and children to obtain information or confessions regarding the activities of ethnic armed organizations or as punishment for perceived sympathy for the opponents of the Tatmadaw. Torture and ill-treatment were used to coerce individuals into forced labour, and conditions of detention often amounted to ill-treatment; civilians were forced to precede military units on patrol in conflict areas, sometimes in Tatmadaw uniforms, thereby exposing them to attacks, death and injury.

62. Women have been subjected to rape and other forms of sexual violence. Some have been abducted by soldiers and then raped, or even gang-raped, before being killed. Women and girls have been selected for forced marriage, and targeted in their homes for sexual violence. In many cases, sexual violence was accompanied by degrading behaviour, including insults and spitting. When women did escape, Tatmadaw soldiers would frequently search for them, threaten and physically abuse members of their family, and destroy or steal their property. Sexual violence against men has been inflicted as a means of torture, including to obtain information or confessions.

63. The Tatmadaw has engaged in arbitrary arrest and deprivation of liberty, in many cases amounting to enforced disappearance. Men and women, and in some cases children, were taken from their villages and detained for forced labour or because of suspected links to ethnic armed organizations. Victims have been held incommunicado in unofficial places of detention for periods ranging from one day to two years. Most were not informed of the

reason for arrest, nor brought before a judge. In one incident in Monekoe, Shan State, more than 100 individuals were arrested and detained in November 2016.

64. As in other areas of Myanmar, forced labour has been a common feature of life for many in northern Myanmar. The mission verified a pattern of systematic use by the Tatmadaw of forced labour, including for portering or digging trenches, or as guides or cooks. Soldiers routinely arrived in villages without warning and took people for forced labour for up to weeks at a time. Some of those taken were required to fight for the Tatmadaw. The Tatmadaw recruited children throughout the period under review, although it has made some effort to address this issue.

65. Violations against ethnic and religious minorities in northern Myanmar are often committed with persecutory intent, in a context of severe discrimination based on ethnic or religious grounds. This has led, for example, to the destruction or ransacking of churches and religious objects during military operations (and sometimes to the subsequent construction of Buddhist pagodas), but also in the use of insulting language while the acts were being committed.

2. Violations and abuses by "ethnic armed organizations"

> *Since my son was forcibly recruited in 2016, I have not heard from him. I always check Facebook to see if I will recognize him in a post, either dead or alive.*

66. Ethnic armed organizations committed international humanitarian law violations and human rights abuses, many in the context of hostilities between the Ta'ang National Liberation Army and the Shan State Army-South, including abduction and detention, ill-treatment and destruction or appropriation of civilian land and property. There have been instances where these groups, as well as the Kachin Independence Army and the Myanmar National Democratic Alliance Army, have failed to take precautionary measures to protect civilians in attacks and forcibly recruited adults and children. Some put immense economic pressure on civilians through arbitrary "taxation". The extent to which rape, torture and killings were committed requires further investigation.

67. While the mission's information on violations and abuses by ethnic armed organizations may not be representative, accounts would indicate that these are frequent but generally not systematic. This warrants further investigation.

3. Devastating humanitarian impact

68. Poverty levels in Kachin and Shan are high. The hostilities in northern Myanmar have compounded the humanitarian situation. People trapped in conflict-affected areas have been denied safe passage to leave. Others are unable to return because their homes have been looted and/or destroyed, because of continuing fighting or the presence of landmines, or because their land was appropriated after they fled, including by the Tatmadaw and corporations. This has resulted in protracted situations of internal displacement.

69. An estimated 100,000 people in Kachin and Shan have been living in displacement camps or camp-like situations since 2011. They live in overcrowded conditions with inadequate shelter. Access to food and health care is limited, while the rate of chronic malnutrition is well above the national average. Outbreaks of preventable diseases are reported. Access to education at all levels is inadequate. Furthermore, the cycle of temporary displacements continues. Among non-displaced populations, access to education and health care is often disrupted by fighting.

70. Humanitarian assistance has been frequently and arbitrarily denied, and despite the clear need thereof, the movement of relief personnel has been restricted for long periods of time. Access has significantly deteriorated since June 2016, to a point where international humanitarian actors are unable to assess needs or provide assistance to the majority of displaced persons, exacerbating already dire conditions. Local organizations also are increasingly restricted.

C. Fundamental freedoms

> *The Bengali population exploded and the aliens tried to seize the land of local ethnics. [...] Race cannot be swallowed by the ground but only by another race. All must be loyal to the State in serving their duties, so that such cases will never happen again.*[10]

71. The mission examined the issue of democratic space and the enjoyment of the rights to freedom of expression, association and peaceful assembly. While Myanmar has taken significant strides on this front, especially between 2011 and 2015, disturbing trends have emerged. Violence and human rights violations, including in Kachin, Rakhine and Shan States, are fuelled by the silencing of critical voices by the Myanmar authorities, who at the same time amplify a hateful rhetoric that emboldens perpetrators.

72. The Myanmar authorities, in particular the Tatmadaw, do not tolerate scrutiny or criticism. They use various laws to arrest, detain or harass civil society actors, journalists, lawyers and human rights defenders who express critical views. The case against two Reuters journalists for their investigative work into the Inn Din massacre and the prosecution of persons peacefully protesting the conflicts in northern Myanmar, including in Yangon, are recent examples. The mission verified instances of reprisals for engagement with the United Nations and of excessive use of force in managing demonstrations.

73. The Government's response to hate speech has been inadequate. The mission is deeply disturbed by the prevalence of hate speech, offline and online, often including advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence. This has accompanied outbreaks of violence, especially in Rakhine State. Dehumanizing and stigmatizing language against the Rohingya, and Muslims in general, has for many years been a key component of the campaign to "protect race and religion", spearheaded by extremist Buddhist groups like MaBaTha (see para. 13 above). Hate narratives are common. The Myanmar authorities have condoned these developments and, although generally using less inflammatory language, their rhetoric has mirrored and promoted the narratives espoused. This includes the insistence that "Rohingya" do not exist or belong in Myanmar, even denying use of the term; denial of the suffering of Rohingya; the association of Rohingya identity with terrorism; and the repeated allusions to illegal immigration and incontrollable birth rates. The impact of this rhetoric is compounded by the stream of false or incomplete information and explicit calls for patriotic action (for example, in a Facebook post, "every citizen has the duty to safeguard race, religion, cultural identities and national interest"). The Myanmar authorities, including the Government and the Tatmadaw, have fostered a climate in which hate speech thrives, human rights violations are legitimized, and incitement to discrimination and violence facilitated.

74. The role of social media is significant. Facebook has been a useful instrument for those seeking to spread hate, in a context where, for most users, Facebook is the Internet. Although improved in recent months, the response of Facebook has been slow and ineffective. The extent to which Facebook posts and messages have led to real-world discrimination and violence must be independently and thoroughly examined. The mission regrets that Facebook is unable to provide country-specific data about the spread of hate speech on its platform, which is imperative to assess the adequacy of its response.

V. Hallmarks of Tatmadaw operations

75. The mission highlights four key common characteristics of Tatmadaw operations in Kachin, Rakhine and Shan States.

[10] Senior General Min Aung Hlaing, "Gallant efforts to defend the HQ against terrorist attacks and brilliant efforts to restore regional peace, security are honoured", Facebook post, 21 September 2017.

A. Targeting of civilians

76. The military has consistently failed to respect international human rights law and the international humanitarian law principles of distinction, proportionality and precaution. The deliberate targeting of civilians has been part of Tatmadaw policies, tactics and conduct for decades. The "Four Cuts" counterinsurgency policy, initiated in the 1960s and still implemented, is aimed at c tting off non-State armed groups from access to food, finances, intelligence, and recruits from the local civilian population. The policy has been implemented through "clearance operations", essentially scorched earth campaigns in which civilians are killed and entire villages destroyed, leading to mass displacement.

77. Such policies and practices violate the State's obligations under international law and amount to criminal conduct. They are also unwarranted; military necessity would never justify killing indiscriminately, gang-raping women, assaulting children and burning entire villages. The tactics used by the Tatmadaw are consistently and grossly disproportionate to actual security threats, especially in Rakhine State, but also in northern Myanmar.

78. While the mission outlines in the present report the violations against civilians from many ethnic groups in Kachin, Rakhine and Shan States, the contempt shown by the Tatmadaw for human life, integrity and freedom, and for international law generally, should be of concern to the entire population. The number of refugees from areas outside these three States attests to the existence of similar human rights concerns elsewhere in the country.

B. Sexual violence

79. Rape and sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011. Similar patterns of rape and sexual violence have been reported for at least three decades. Rape, gang rape, sexual slavery, forced nudity, sexual humiliation, mutilation and sexual assault are frequently followed by the killing of victims. The scale, brutality and systematic nature of these violations indicate that rape and sexual violence are part of a deliberate strategy to intimidate, terrorize or punish a civilian population, and are used as a tactic of war. This degree of normalization is only possible in a climate of long-standing impunity.

C. Exclusionary rhetoric

80. The Tatmadaw has historically cast itself as the protector of the nation, preserving "national unity in the face of ethnic diversity" while prioritizing Bamar-Buddhist identity and interests. Discrimination against ethnic and religious minority groups has been well-documented for decades. Military operations are often accompanied by deeply insulting slurs and outright threats linked to ethnicity and religion.

81. The situation of the Rohingya has been aggravated by their gradually increasing exclusion from the Myanmar nation since the 1960s, amid decades of State-sponsored stigmatization, leading to their de facto statelessness and being reviled by much of the population. The members of the mission were struck by the normality of deeply exclusionary and dehumanizing rhetoric in Myanmar society, actively nurtured by the Tatmadaw. While other ethnic and religious minorities are, at least in theory, accepted as belonging to the nation under their "national race" status, the lack of status of the Rohingya has dramatically increased their vulnerability, which contributes to the extreme scale and intensity of the violence against them.

D. Impunity

82. The Tatmadaw acts with complete impunity and has never been held accountable. Its standard response is to deny, dismiss and obstruct. It publicly lauds the discipline of troops and operations conducted "in full accordance with the law". It promotes perpetrators. Occasional superficial investigations have only been undertaken when the Tatmadaw has

been faced with public exposure of undeniable evidence. It consistently fails to attribute responsibility, thereby reinforcing its message to troops that they will face no consequences. This pattern is a result of the political and legal construct of the country, whereby the Tatmadaw is removed from all civilian oversight and is given the constitutional right to adjudicate its own affairs. The Commander-in-Chief makes "final and conclusive" decisions in matters of military justice. The documented history of crimes committed by the Tatmadaw demonstrates an absence of responsible command, and of measures to prevent or repress crimes.

VI. Crimes under international law

83. On the basis of the body of information collected, the mission has reasonable grounds to conclude that serious crimes under international law have been committed that warrant criminal investigation and prosecution.

A. Genocide

84. Genocide is when a person commits a prohibited act with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. The Rohingya are a protected group under this definition. Their treatment by the Myanmar security forces, acting in concert with certain civilians, includes conduct that amounts to four of the five defined prohibited acts: (a) killing; (b) causing serious bodily or mental harm; (c) inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part; and (d) imposing measures intending to prevent births.

85. The critical element of the crime is "genocidal intent". The mission assessed its body of information in the light of the jurisprudence of international tribunals regarding the reasonable inference of such intent. The crimes in Rakhine State, and the manner in which they were perpetrated, are similar in nature, gravity and scope to those that have allowed genocidal intent to be established in other contexts. Factors pointing to such intent include the broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including to alter the demographic composition of Rakhine State; the level of organization indicating a plan for destruction; and the extreme scale and brutality of the violence committed.

86. Having given careful consideration to other possible inferences regarding intent, the mission considers that these can be discounted as unreasonable. In this regard, it recalls the statement made by the Tatmadaw Commander-in-Chief that the "clearance operations" were not a response to a concrete threat from ARSA, but to the "unfinished job" of solving the "long-standing" "Bengali problem" (see para. 35 above).

87. In the light of the above considerations on the inference of genocidal intent, the mission concludes that there is sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State.

B. Crimes against humanity

88. On the basis of information gathered, the mission finds that crimes against humanity have been committed in Kachin, Rakhine and Shan States, principally by the Tatmadaw. In the case of Kachin and Shan States, the crimes include murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, persecution, and enslavement. In Rakhine State, these and other crimes against humanity have been committed. The elements of extermination and deportation are also present, while the systematic oppression and discrimination not only supports a finding of persecution but may also amount to the crime of apartheid. For both northern Myanmar and Rakhine State, the acts were committed as part of a widespread and systematic attack on a civilian population.

C. War crimes

89. Given the mission's consideration that non-international armed conflicts have been ongoing in Kachin and Shan States (for the entire period under review) and in Rakhine State since at least August 2017, much of the conduct amounting to crimes against humanity will also satisfy the war crime elements of murder, torture, cruel treatment, outrages upon personal dignity, attacking civilians, displacing civilians, pillaging, attacking protected objects, taking hostages, sentencing or execution without due process, as well as rape, sexual slavery and sexual violence. Certain acts committed by ethnic armed organizations and ARSA may also constitute war crimes.

VII. Responsibility

90. Non-State armed groups have committed crimes against civilians, for which they should be held accountable. During the period under review, the Tatmadaw was the main perpetrator of serious human rights violations and crimes under international law in Kachin, Rakhine and Shan States. In addition, in Rakhine State, the Myanmar police force, NaSaKa[11] and Border Guard Police were also perpetrators. Local authorities, militias, militant "civilian" groups, politicians and monks participated or assisted in violations, to varying degrees.

91. The Tatmadaw command exercises effective control over its own soldiers, as well as over other armed actors deployed in military operations. The consistent tactical formula employed by the Tatmadaw exhibits a degree of coordination only possible when all troops are acting under the effective control of a single unified command. This effective control, combined with the knowledge of crimes committed by subordinates, a failure to take necessary and reasonable measures to prevent and punish crimes, and a causal link between these failures and the atrocities committed, indicate that individual criminal liability would extend beyond individual perpetrators to their hierarchical commanders.

92. The mission has drawn up a non-exhaustive list of alleged perpetrators of crimes under international law, indicating priority subjects for investigation and prosecution. The list includes the names of alleged direct perpetrators, but focuses on those exercising effective control over them. In relation to the recent events in Rakhine State, this includes the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing, and:

- Deputy Commander-in-Chief, Vice Senior-General Soe Win
- Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw
- Commander, Western Regional Military Command, Major-General Maung Maung Soe
- Commander, 33rd Light Infantry Division, Brigadier-General Aung Aung
- Commander, 99th Light Infantry Division, Brigadier-General Than Oo

The full list will be held in the mission's archives, kept in the custody of OHCHR, and may be shared with any competent and credible body pursuing accountability in accordance with recognized international norms and standards.

93. The constitutional powers of the civilian authorities afford little scope for controlling the actions of the Tatmadaw, nor is there any indication that they participated directly in planning or implementing security operations or were part of the command structure. Nevertheless, nothing indicates that the civilian authorities used their limited powers to influence the situation in Rakhine State where crimes were being perpetrated. The State Counsellor, Daw Aung San Suu Kyi, has not used her de facto position as Head of Government, nor her moral authority, to stem or prevent the unfolding events, or seek alternative avenues to meet a responsibility to protect the civilian population. On the contrary, the civilian authorities have spread false narratives, denied the wrongdoing of the

[11] The "Border Area Immigration Control Headquarters", disbanded in 2013.

Tatmadaw, blocked independent investigations (including that of the fact-finding mission), and overseen the destruction of evidence. Through their acts and omissions, the civilian authorities have contributed to the commission of atrocity crimes.

94. Systemic discrimination and crimes under international law were committed during a period of significant international engagement in Myanmar, and while the United Nations was supposed to be implementing its Human Rights Up Front action plan. While Myanmar was repeatedly identified as a crisis situation requiring a human rights-driven response by the "whole of the United Nations", this approach was rarely, if ever, taken. Rather, many United Nations agencies have continued to prioritize development goals, humanitarian access and quiet diplomacy. That approach has demonstrably failed; and the United Nations as a whole has failed adequately to address human rights concerns in Myanmar. Even now, the approach taken displays few signs of any lessons learned, with human rights missing from agreements recently signed with the Government. While thanking those United Nations entities that have provided it with valuable assistance and information, the mission regrets the lack of cooperation from others.

VIII. Accountability

I am not a very educated person but I hope the United Nations has the ability to get us justice by making sure that the Government of Myanmar can be questioned about what they did to us.

95. Justice has remained elusive for victims in Myanmar for decades, with the authorities systematically failing to condemn, investigate and prosecute perpetrators. Impunity for gross human rights violations has significantly and demonstrably contributed to the validation of deeply oppressive and discriminatory conduct, enabled recurrence of human rights violations and atrocity crimes, emboldened perpetrators and silenced victims. Unless impunity is addressed, and all ranks within the security forces are held accountable for their past, current and future actions, similar outbreaks of violence and associated atrocity crimes can be expected to continue, with further devastating domestic and regional impact.

96. In the face of the Rakhine crisis, the Myanmar authorities have created ad hoc inquiry commissions and boards. The mission has examined eight such efforts since 2012. None meets the standard of an impartial, independent, effective and thorough human rights investigation. To the mission's knowledge, none has led to any prosecution for gross human rights violations and redress for victims. The reason is simple: this is not possible in Myanmar.

97. Impunity is deeply entrenched in the State's political and legal system, effectively placing the Tatmadaw above the law. The Constitution and other laws provide for immunities and place the Tatmadaw beyond civilian oversight. The Tatmadaw can independently adjudicate its own matters, with the Commander-in-Chief having the final word. The rare cases, brought mostly before military courts without transparency, are wholly insufficient to counter the overall trend of impunity. Furthermore, military courts are inadequate forums to deal with large-scale human rights violations perpetrated by the military. Nor are civilian courts the answer; the domestic justice system is not independent and lacks the capacity to respect fair trial standards or to deal with the breadth and gravity of the violations perpetrated by high-level officials, especially crimes under international law. Those who file complaints often face intimidation and reprisals. In short, accountability at the domestic level is currently unattainable.

98. Even though the primary responsibility for investigating and prosecuting crimes under international law lies with the Government of Myanmar, it has demonstrated that it is unable and unwilling. Accountability would require an overhaul of the entire national justice and security sectors. The mission has concluded on reasonable grounds that the Government's recently-created commission of inquiry will not and cannot provide a real avenue for accountability, even with some international involvement. The impetus for accountability must come from the international community.

99. The Mission proposes an accountability process that is transformative, victim-centred, comprehensive and inclusive.[12] The process is aimed at contributing to three fundamental shifts: breaking the climate of impunity, ensuring that all State institutions, including the security forces, are answerable to the people, and promoting a concept of the State and the nation of Myanmar that is inclusive, based on equality and respect for the human rights of all. These considerations should permeate all measures adopted in the areas of truth, justice, reparations and guarantees of non-recurrence.

IX. Conclusions and recommendations

100. **The gross human rights violations and abuses committed in Kachin, Rakhine and Shan States are shocking for their horrifying nature and ubiquity. Many of these violations undoubtedly amount to the gravest crimes under international law. They are also shocking because they stem from deep fractures in society and structural problems that have been apparent and unaddressed for decades. They are shocking for the level of denial, normalcy and impunity that is attached to them. The mission concludes that these abusive patterns are reflective of the situation in Myanmar as a whole.**

101. **Myanmar has a heavy responsibility to remedy the situation as a matter of the utmost urgency; otherwise, it risks destroying its democratic reform process. The international community also bears responsibility and must take a united stand both to condemn the violations and to assist Myanmar in addressing the root causes of its recurrent problems. This begins by ensuring that the perpetrators of crimes are held to account, and by giving hope to victims of a future without the fear and insecurity that have to date characterized their existence.**

102. **The steps required to address the human rights crises in Myanmar are well known. For nearly three decades, five consecutive special rapporteurs on the situation of human rights in Myanmar have presented an annual report to the General Assembly and the Human Rights Council, with detailed recommendations for all stakeholders. Similarly, the United Nations High Commissioner for Human Rights has formulated concrete recommendations, as have many international and national civil society organizations. The Advisory Commission on Rakhine State also presented a detailed report. These recommendations should be implemented immediately.**

103. **Besides its comprehensive recommendations,[13] the mission draws particular attention to the priority areas for action by the international community below.**

104. **The international community, through the United Nations, should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from genocide, crimes against humanity and war crimes. It should take collective action in accordance with the Charter of the United Nations, as necessary.**

105. **The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court or, alternatively, by creating an ad hoc international criminal tribunal. Furthermore, the Security Council should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law. It should also impose an arms embargo on Myanmar.**

106. **Until the Security Council acts, the General Assembly, or alternatively the Human Rights Council, should create an independent, impartial mechanism to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files to facilitate and**

[12] See A/HRC/39/CRP.2.

[13] Ibid.

expedite fair and independent criminal proceedings in national, regional or international courts or tribunals.

107. **The Human Rights Council should continue to support the mandates of the Special Rapporteur on the situation of human rights in Myanmar, the United Nations High Commissioner for Human Rights and the Office of the High Commissioner, and ensure they have adequate resources to maintain a strong focus on the human rights crisis in Myanmar.**

108. **The Human Rights Council should specifically request OHCHR to focus on ensuring accountability for human rights violations and abuses in Myanmar, including by enhanced monitoring, documentation, analysis and public reporting on the situation of human rights; raising awareness among civil society and other actors engaged in documenting human rights violations about relevant international standards; working with victim communities to raise awareness about justice options; and supporting comprehensive rule of law and security sector reform in Myanmar in accordance with international human rights norms and standards. Appropriate resources should be allocated.**

109. **The Human Rights Council should establish a second fact-finding mission for a limited period to build on the work undertaken by the mission, until either one of the mechanisms outlined in paragraphs 103 and 104 above are operational, or the reinforced work of OHCHR set out in paragraph 107 is in place.**

110. **The United Nations should urgently adopt a common strategy to ensure that all engagement with Myanmar takes into account and addresses human rights concerns, in accordance with the Human Rights Up Front action plan. This should guide all engagement of the United Nations in Myanmar, particularly in relation to Rakhine State, and include policies and public advocacy stances. All support provided by the United Nations to the Myanmar authorities should undergo a full human rights due diligence analysis.**

111. **As a matter of urgency, a comprehensive, independent inquiry should be conducted into the involvement of the United Nations in Myanmar since 2011, with a view to establishing whether everything possible to prevent or mitigate the unfolding crises was done, identifying lessons learned and good practices, making recommendations as appropriate, including on accountability, and enabling more effective work in future.**

112. **The United Nations and the international community must ensure that the repatriation of refugees and the return of internally displaced persons are allowed only when safe, voluntary and dignified, with explicit human rights protections in place, including citizenship. In the current circumstances, such returns are not possible.**

113. **All Member States should ensure that engagement with Myanmar, and support for aid, development and reform projects, take into account and address human rights concerns and explicitly conform to the principles of non-discrimination and equality. They should ensure that humanitarian organizations working on the situation in Myanmar are appropriately funded. States should cease operational support for the Tatmadaw and other security forces until there is (a) a demonstrable commitment to genuine reform; (b) international assistance in implementing reform; and (c) acceptance of and cooperation with international mechanisms to hold those responsible accountable for crimes under international law.**

114. **Regardless of the imposition of an arms embargo by the Security Council, States should not authorize the transfer of arms to Myanmar, considering the overriding risk that they would be used to undermine peace and security and in the commission of serious crimes under international law.**

115. **Relevant regional organizations, including the European Union and the Association of Southeast Asian Nations (ASEAN), should develop strategies to ensure accountability for perpetrators of crimes under international law in Myanmar,**

including through sustained engagement with Myanmar and support for an international justice mechanism.

116. **Member States should exercise jurisdiction to investigate and prosecute alleged perpetrators of serious crimes under international law committed in Myanmar.**

117. **The United Nations should establish a trust fund for victim support, through which victims can receive psychosocial support, legal aid and livelihood support, and others means of assistance. All trust fund projects should be designed in consultation with victims.**